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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,435	09/24/2003	Robert H. Kelley-Wickemeyer	03004.8094US	2918

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EXAMINER

SWIAITEK, ROBERT P

ART UNIT	PAPER NUMBER
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3643

NOTIFICATION DATE	DELIVERY MODE
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06/29/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentprocurement@perkinscoie.com

Office Action Summary

Application No.

10/671,435

Applicant(s)

KELLEY-WICKEMEYER ET AL.

Examiner

Rob Swiatek

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37, 39-48 and 50-78 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37, 39-48 and 50-78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Transposition of Patent Drawing Review (PTO-940)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 6-19-09; 5-14-11; 6-1-11
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The reissue declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following: It does not state that applicant (1) believes the original patent to be partly inoperative or invalid by reason of the patentee claiming more than patentee had a right to claim in the patent *or* (2) believes the original patent to be partly inoperative or invalid by reason of the patentee claiming less than patentee had a right to claim in the patent. Where, however, a given independent claim is considered to be overly broad, and another independent claim is considered to be overly narrow, patentee has claimed both more *and* less than patentee had a right to claim. In this latter instance, both above-quoted statements would be used. Applicant's statement that the original patent is "wholly or partly inoperative or invalid . . . by reason of the patentee claiming more or less than he had the right to claim in the patent" is improper because a claim cannot claim "more *or* less" at the same time.

In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Claims 1-37, 39-48, 50-78 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defects is set forth above.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) that includes the "Every error . . . " language set forth below as well as language addressing statements (1) and (2) above will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

Art Unit: 3643

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

See MPEP § 1414.01.

If the above rejection is overcome, claims 1-37, 39-48, 50-78 will be allowed.

/Rob Swiatek/

Primary Examiner, Art Unit 3643

Ph.: 571/272-6894

19 June 2011